

SYNOPSIS

GASOLINE AND SPECIAL FUEL EXCISE TAX AND GASOLINE AND SPECIAL FUEL CONSUMERS' SALES TAX -- "NEGLIGENCE" ADDITIONS VACATED -- MAJOR FINANCIAL CIRCUMSTANCES BEYOND TAXPAYER'S CONTROL -- The West Virginia Office of Tax Appeals will vacate the additions to tax assessed for "negligence," pursuant to the provisions of W. Va. Code § 11-10-18(c) [1986], when the delinquent payments of gasoline and special fuel excise tax and gasoline and special fuel consumers' sales tax were due to major financial circumstances beyond taxpayer's control for a relatively short period of time.

FINAL DECISION

The Field Auditing Division of the West Virginia State Tax Commissioner's Office conducted an audit of the books and records of the Petitioner. Thereafter, on May 06, 2003, the Director of this Division of the Commissioner's Office issued two state tax assessments against the Petitioner.

The first tax assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 14 of the West Virginia Code. This assessment was for the period of March 01, 2000 through February 28, 2003, for tax, interest, through April 30, 2003, and additions to tax, for certain alleged "negligence," for a total assessed gasoline and special fuel excise tax liability.

Also, on May 06, 2003, the Commissioner (by the Division) issued a gasoline and special fuel consumers' sales tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code, for the period of March 01, 2000 through February 28, 2003, for tax, interest, through April 30,

2003, and additions to tax, for certain alleged “negligence,” for a total assessed gasoline and special fuel consumers’ sales tax liability.

Written notice of both of these tax assessments was served on the Petitioner on May 07, 2003.

Thereafter, by mail postmarked May 15, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment with respect to each tax assessment.

FINDINGS OF FACT

1. The Petitioner is a family-owned and family-operated business.
2. The tax assessments in this matter are attributed almost exclusively to one year during the period of the audit, the year 2002. During that year, primarily, the Petitioner encountered major cash flow problems, due primarily to significant gasoline price increases that resulted in a large amount of uncollectible accounts receivable (“bad debts”).
3. Also during that same year, primarily, the Petitioner had to discharge an accounting clerk because of very poor work performance, and that discharge -- at a time when the business was “short-handed” and distracted due to major health problems of several family-member employees -- contributed significantly to the delinquent tax return filing and delinquent tax payments.
4. The Petitioner has taken measures to correct the cash flow problems, such as requiring customers to pay within a much shorter period of time.
5. According to the record in this matter the Petitioner has had an excellent tax compliance record for almost all other years since it began business in the 1950’s.

DISCUSSION

The only issue raised is whether this tribunal should abate the additions assessed for “negligence,” pursuant to the provisions of W. Va. Code § 11-10-18(c) [1986].

CONCLUSIONS OF LAW

1. The West Virginia Office of Tax Appeals will vacate the additions to tax assessed for “negligence,” pursuant to the provisions of W. Va. Code § 11-10-18(c) [1986], when the delinquent payments of gasoline and special fuel excise tax and gasoline and special fuel consumers’ sales tax were due, as here, to major financial circumstances beyond taxpayer’s control for a relatively short period of time.

2. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e) [2002].

3. In light of conclusion of law no. (1) above, the Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether the “negligence” additions should be vacated.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the gasoline and special fuel excise tax assessment issued against the Petitioner for the period of March 01, 2000 through February 28, 2003, should be and is hereby **AFFIRMED** as to the **tax** and **interest, updated** through August 31, 2003, for a **total** liability; on the other hand, the “negligence” **ADDITIONS** to tax are **VACATED** in full.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the gasoline and special fuel consumers’ sales tax assessment issued against the Petitioner for the period of March 01, 2000 through February 28, 2003, should be and is hereby **AFFIRMED** as to the **tax** and **interest, updated** through August 31, 2003, for a **total** liability; on the other hand, the “negligence” **ADDITIONS** to tax are **VACATED** in full.